

NO. 46357-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

AIMEE MOSES,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Stephanie A. Arend, Judge

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REPLY BRIEF OF APPELLANT

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Attorney for Appellant

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A. ISSUES IN REPLY

1. Does the State's brief mischaracterize the law as to the presumption of innocence?
2. Does the State's brief misstate a number of facts in the record?

B. ARGUMENTS IN REPLY<sup>1</sup>

1. THE STATE'S BRIEF MISSTATES THE LAW AS TO THE PRESUMPTION OF INNOCENCE.

Aimee Moses argued in her opening brief that the trial court violated her right to the presumption of innocence by sustaining the State's objection to argument by defense counsel that evidence must be considered while presuming the innocence of the accused.

The presumption of innocence does not stop at the beginning of jury deliberations. Rather, it persists until the jury, after considering all the evidence, is satisfied the State has proved the charged crime beyond a reasonable doubt. State v. Evans, 163 Wn. App. 635, 644, 260 P.3d 934, 939 (2011); 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 4.01 (3d ed. 2008).

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<sup>1</sup> This brief refers to the verbatim reports as follows: 1RP – 2/24/14; 2RP – 2/25/14; 3RP – 2/26/14; 4RP – 3/14/14; 5RP – 4/4/14; 6RP – 4/21/14; 7RP – 4/22/14; 8RP – 4/23/14; 9RP – 4/28/14; 10RP – 4/29/14; 11RP – 4/30/14; 12RP – 5/1/14; 13RP – 5/5/14; 14RP – 5/6/14; 15RP – 5/7/14; 16RP – 5/8/14; 17RP – 5/12/14; 18RP – 5/13/14; 19RP – 5/14/14; and 20RP – 5/28/14.

Citing only State v. Deal,<sup>2</sup> however, the State argues — alarmingly — that the jury is not subject to any mandatory presumptions. Brief of Respondent (BOR) at 23. Observing that mandatory presumptions in favor of the *State* violate due process, Deal invalidated an instruction that improperly shifted the burden to the defense in a burglary case.<sup>3</sup> 128 Wn.2d at 699, 704. Deal therefore stands for a proposition that is the opposite of the one the State cites it for.

Deal is not on point and does not support the State’s argument. Based on the authorities cited in Moses’s opening brief, this Court should reverse her conviction.

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<sup>2</sup> 128 Wn.2d 693, 911 P.2d 996 (1996).

<sup>3</sup> The Court held the following instruction invalid:

A person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein *unless such entering or remaining shall be explained by evidence satisfactory to the jury to have been made without such criminal intent*. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.

Deal, 128 Wn.2d at 697 (emphasis in original).

2. THE STATE'S BRIEF MISSTATES A NUMBER OF FACTS IN THE RECORD.

The State's brief also mischaracterizes a number of facts in the record at trial. First, the brief states M.A. and his sister are members of the Muckleshoot tribe. Rather, their mother is a member. 10RP 695, 699. Second, the brief refers to Vicki Jones as M.A.'s teacher. In fact, she was a family support specialist at his preschool. 10RP 619. Third, the brief refers to Christmas break of 2010. Instead, the holidays discussed at trial occurred in 2011-2012. 14RP 1321-22. Finally, the brief repeatedly refers to the Moses family as "foster parents" for M.A. and his sister. E.g., BOR at 13. Rather, they were a family placement within the tribe, not State-licensed foster parents like the children's previous placement. 11RP 743-47, 782-88; 13RP 1202.

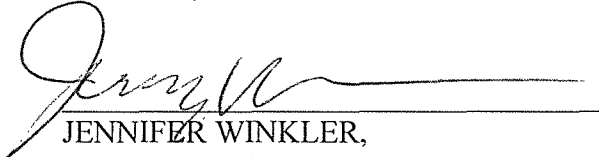
C. CONCLUSION

For the reasons stated above and in Moses's opening brief, and based on the additional arguments adopted by Moses, this Court should reverse her conviction and remand for a new trial..

DATED this 30<sup>th</sup> day of April, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Jennifer Winkler", is written over a horizontal line.

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Attorneys for Appellant

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DIVISION ONE

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Respondent,	)	
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v.	)	COA NO. 46357-1-II
	)	
AMEE MOSES,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30<sup>TH</sup> DAY OF APRIL 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] AMEE MOSES  
DOC NO. 374663  
WASHINGTON CORRECTIONS CENTER FOR WOMEN  
9601 BUJACHIC ROAD NW  
GIG HARBOR, WA 98332

**SIGNED** IN SEATTLE WASHINGTON, THIS 29<sup>TH</sup> DAY OF APRIL 2015.

x *Patrick Mayovsky*

**NIELSEN, BROMAN & KOCH, PLLC**

**April 29, 2015 - 5:58 PM**

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